

Introduced by Senator Ackerman

February 22, 2005

An act to amend Sections 18005 and 18010 of, to add Sections 18003, 18008, and 18620 to, and to add Chapter 6 (commencing with Section 18300) to Part 1 of Title 3 of, the Corporations Code, relating to associations.

LEGISLATIVE COUNSEL'S DIGEST

SB 702, as introduced, Ackerman. Associations.

Existing law sets forth certain requirements and other provisions applicable to unincorporated associations. Existing law exempts a member, director, officer, or agent of a nonprofit association from liability for contractual obligations of the association if specified requirements are satisfied.

This bill would add provisions governing unincorporated associations, including provisions relating to director duties, termination or suspension of membership, member voting, amendment of governing documents, merger, and dissolution. The bill would also provide that a member, director, officer, or agent of a nonprofit association is not liable for injury, damage, or harm caused by an act or omission of the association or an act or omission of a director, officer, or agent of the association, unless certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 18003 is added to the Corporations Code, to read:

18003. “Board” means the board of directors or other governing body of an unincorporated association.

SEC. 2. Section 18005 of the Corporations Code is amended to read:

18005. “Director” means a natural person serving as a member of the board or other ~~representative~~ governing body of the unincorporated association.

SEC. 3. Section 18008 is added to the Corporations Code, to read:

18008. “Governing document” means a constitution, articles of association, bylaws, or other writing that governs the purpose or operation of an unincorporated association or the rights or obligations of its members.

SEC. 4. Section 18010 of the Corporations Code is amended to read:

18010. “Governing principles” means the principles stated in ~~the constitution, articles of association, bylaws, regulations, or other writing that governs the purpose or operation of an unincorporated association, or the rights or obligations of its members. If there is no written~~ *an unincorporated association’s governing documents. If an association has no governing documents or the governing documents do not include a* provision governing an issue, the association’s governing principles regarding that issue may be inferred from its established practices. For the purpose of this section, “established practices” means the practices used by an unincorporated association without material change or exception during the most recent five years of its existence, or if it has existed for less than five years, during its entire existence.

SEC. 5. Chapter 6 (commencing with Section 18300) is added to Part 1 of Title 3 of the Corporations Code, to read:

CHAPTER 6. GOVERNANCE

Article 1. Director Duties

18300. (a) A director of an unincorporated association shall perform the duties of a director, including duties as a member of a committee of the board, in good faith, in a manner the director believes to be in the best interests of the association, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(b) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, that is prepared or presented by any of the following persons or committees, so long as the director believes that the person or committee is reliable and competent in the matters presented:

(1) An officer or employee of the unincorporated association.

(2) An attorney, independent accountant, or other expert.

(3) A committee of the board upon which the director does not serve, as to matters within its designated authority.

(4) If the unincorporated association has a religious purpose, a religious authority, such as a minister, priest, or rabbi, as to matters the director believes to be within the person's designated authority.

(c) The governing documents of an unincorporated association may establish a higher standard of conduct, but shall not establish a lower standard of conduct, than is provided in subdivisions (a) and (b).

(d) A person who performs the duties of a director in accordance with this section is not liable for an alleged failure to discharge that person's obligations as a director, including any act or omission that exceeds or defeats any purpose to which the unincorporated association, or assets held by it, may be dedicated.

Article 2. Termination or Suspension of Membership

18310. (a) Unless otherwise provided by an unincorporated association's governing principles, membership in the

1 unincorporated association is terminated by any of the following
2 events:

- 3 (1) Resignation of the member.
- 4 (2) Expiration of the fixed term of the membership, unless the
5 membership is renewed before its expiration.
- 6 (3) Expulsion of the member.
- 7 (4) Death of the member.
- 8 (5) Termination of the legal existence of a member that is not
9 a natural person.

10 (b) Termination of membership does not relieve a person from
11 an obligation incurred as a member before termination.

12 (c) Termination of membership does not affect the right of an
13 unincorporated association to enforce an obligation against a
14 person incurred as a member before termination, or to obtain
15 damages for its breach.

16 18320. (a) This section only applies if membership in an
17 unincorporated association includes a property right or if
18 expulsion or suspension of a member would affect an important,
19 substantial economic interest. This section does not apply to an
20 unincorporated association that has a religious purpose.

21 (b) Expulsion or suspension of a member shall be done in
22 good faith and in a fair and reasonable manner. A procedure that
23 satisfies the requirements of subdivision (c) is fair and
24 reasonable, but a court may also determine that another
25 procedure is fair and reasonable taking into account the full
26 circumstances of the expulsion or suspension.

27 (c) A procedure for expulsion or suspension of a member that
28 satisfies the following requirements is fair and reasonable:

29 (1) The procedure is included in the unincorporated
30 association's governing documents.

31 (2) The member to be expelled or suspended is given notice,
32 including a statement of the reasons for the expulsion or
33 suspension. The notice shall be delivered at least 15 days before
34 the effective date of the expulsion or suspension.

35 (3) The member to be expelled or suspended is given an
36 opportunity to be heard by the person or body deciding the
37 matter, orally or in writing, not less than five days before the
38 effective date of the expulsion or suspension.

39 (d) A notice pursuant to this section may be delivered by any
40 method reasonably calculated to provide actual notice. A notice

1 delivered by mail shall be sent by first-class, certified, or
2 registered mail to the last address of the member shown on the
3 unincorporated association's records.

4 (e) A member may commence a proceeding to challenge the
5 expulsion or suspension of the member, including a claim
6 alleging defective notice, within one year after the effective date
7 of the expulsion or suspension. The court may order any relief,
8 including reinstatement, it determines is equitable under the
9 circumstances. A vote of the members or of the board may not be
10 set aside solely because a person was wrongfully excluded from
11 voting by virtue of the challenged expulsion or suspension,
12 unless the court determines that the wrongful expulsion or
13 suspension was in bad faith and for the purpose, and with the
14 effect, of wrongfully excluding the member from the vote or
15 from the meeting at which the vote took place, so as to affect the
16 outcome of the vote.

17 (f) This section governs only the procedure for expulsion or
18 suspension and not the substantive grounds for expulsion or
19 suspension. An expulsion or suspension based on substantive
20 grounds that violate contractual or other rights of the member or
21 are otherwise unlawful is not made valid by compliance with this
22 section.

23 24 Article 3. Member Voting 25

26 18330. Except as otherwise provided by statute or by an
27 unincorporated association's governing principles, the following
28 rules govern a member vote conducted pursuant to this chapter:

29 (a) A vote may be conducted either at a member meeting at
30 which a quorum is present or by a written ballot in which the
31 number of votes cast equals or exceeds the number required for a
32 quorum. Approval of a matter voted on requires an affirmative
33 majority of the votes cast.

34 (b) Notice of the vote shall be delivered to all members
35 entitled to vote on the date of delivery. The notice shall be
36 delivered or mailed or sent electronically to the member
37 addresses shown in the association's records a reasonable time
38 before the vote is to be conducted. The notice shall state the
39 matter to be decided and describe how and when the vote is to be
40 conducted.

1 (c) If the vote is to be conducted by written ballot, the notice
2 of the vote shall serve as the ballot. It shall set forth the proposed
3 action, provide an opportunity to specify approval or disapproval
4 of any proposal, and provide a reasonable time within which to
5 return the ballot to the unincorporated association.

6 (d) One-third the voting power of the association constitutes a
7 quorum.

8 (e) The voting power of the association is the total number of
9 votes that can be cast by members on a particular issue at the
10 time the member vote is held.

11 12 Article 4. Amendment of Governing Documents

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14 18340. If an unincorporated association's governing
15 principles do not provide a procedure to amend the association's
16 governing documents, the governing documents may be amended
17 by a vote of the members.

18 19 Article 5. Merger

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21 18350. The following definitions govern the construction of
22 this article:

23 (a) "Constituent entity" means an entity that is merged with
24 one or more other entities and includes the surviving entity.

25 (b) "Disappearing entity" means a constituent entity that is not
26 the surviving entity.

27 (c) "Surviving entity" means an entity into which one or more
28 other entities are merged.

29 18360. An unincorporated association may merge with any
30 other unincorporated association, domestic corporation, foreign
31 corporation, or other business entity that is authorized by law to
32 effect a merger with an unincorporated association. As used in
33 this section, the term "other business entity" has the meaning
34 provided in Section 5063.5.

35 18370. A merger involving an unincorporated association is
36 subject to the following requirements:

37 (a) Each party to the merger shall approve an agreement of
38 merger. The agreement shall include the following provisions:

39 (1) The terms of the merger.

1 (2) Any amendments the merger would make to the articles,
2 bylaws, or other governing documents of the surviving entity.

3 (3) The name, place of organization, and type of entity of each
4 constituent entity.

5 (4) The name of the constituent entity that will be the
6 surviving entity.

7 (5) If the name of the surviving entity will be changed in the
8 merger, the new name of the surviving entity.

9 (6) The disposition of the memberships or ownership interests
10 of each constituent entity.

11 (7) Other details or provisions, if any, including any details or
12 provisions required by the law under which a constituent entity is
13 organized.

14 (b) The principal terms of the merger agreement shall be
15 approved by the board, the members, and any person whose
16 approval is required by the association's governing documents.
17 Unless otherwise provided in the governing documents, the
18 members shall approve the agreement in the manner provided for
19 amendment of the association's governing documents. The
20 members may approve the agreement before or after the board
21 approves the agreement.

22 (c) A merger agreement that would cause the members of an
23 unincorporated association to become individually liable for an
24 obligation of a constituent or surviving entity shall be approved
25 by all of the members of the unincorporated association.
26 Approval by all members is not required under this subdivision if
27 the agreement of merger provides for purchase by the surviving
28 entity of the membership interest of a member who votes against
29 approval of the merger agreement.

30 (d) A merger agreement may be amended by the board, unless
31 the amendment would change a principal term of the agreement,
32 in which case it shall be approved as provided in subdivision (b).

33 (e) Subject to the contractual rights of third parties, the board
34 may abandon a merger without the approval of the members.

35 18380. (a) A merger pursuant to this article has the following
36 effect:

37 (1) The separate existence of the disappearing entity ceases.

38 (2) The surviving entity succeeds, without other transfer, to
39 the rights and property of the disappearing entity.

1 (3) The surviving entity is subject to all the debts and
2 liabilities of the disappearing entity. A trust or other obligation
3 governing property of the disappearing entity applies as if it were
4 incurred by the surviving entity.

5 (b) All rights of creditors and all liens on or arising from the
6 property of each of the constituent entities are preserved
7 unimpaired, provided that a lien on property of a disappearing
8 entity is limited to the property subject to the lien immediately
9 before the merger is effective.

10 (c) An action or proceeding pending by or against a
11 disappearing entity or other party to the merger may be
12 prosecuted to judgment, which shall bind the surviving entity, or
13 the surviving entity may be proceeded against or substituted in its
14 place.

15 (d) A merger does not affect an existing liability of a member,
16 director, officer, or agent of a constituent unincorporated
17 association for an obligation of the unincorporated association.

18 18390. If, as a consequence of merger, a surviving entity
19 succeeds to ownership of real property located in this state, the
20 surviving entity's record ownership of that property may be
21 evidenced by recording in the county in which the property is
22 located a copy of the agreement of merger that is signed by the
23 president and secretary or other comparable officers of the
24 constituent entities and is verified and acknowledged as provided
25 in Sections 149 and 193.

26 18400. A bequest, devise, gift, grant, or promise contained in
27 a will or other instrument of donation, subscription, or
28 conveyance that is made to a disappearing entity and that takes
29 effect or remains payable after the merger inures to the benefit of
30 the surviving entity. A trust obligation that would govern
31 property if transferred to the disappearing entity applies to
32 property that is instead transferred to the surviving entity under
33 this section.

34 Article 6. Dissolution

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36 18410. An unincorporated association may be dissolved by
37 any of the following methods:

38 (a) If the association's governing documents provide a method
39 for dissolution, by that method.
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1 (b) If the association's governing documents do not provide a
2 method for dissolution, by the affirmative vote of a majority of
3 the voting power of the association.

4 (c) If the association's operations have been discontinued for
5 at least three years, by the board or, if the association has no
6 incumbent board, by the members of its last preceding incumbent
7 board.

8 (d) If the association's operations have been discontinued, by
9 court order.

10 18420. Promptly after commencement of dissolution of an
11 unincorporated association, the board or, if none, the members
12 shall promptly wind up the affairs of the association, pay or
13 provide for its known debts or liabilities, collect any amounts due
14 to it, take any other action as is necessary or appropriate for
15 winding up, settling, and liquidating its affairs, and dispose of its
16 assets as provided in Section 18130.

17 SEC. 6. Section 18620 is added to the Corporations Code, to
18 read:

19 18620. A member, director, officer, or agent of a nonprofit
20 association is not liable for injury, damage, or harm caused by an
21 act or omission of the association or an act or omission of a
22 director, officer, or agent of the association, unless any of the
23 following conditions is satisfied:

24 (a) The member, director, officer, or agent expressly assumes
25 liability for injury, damage, or harm caused by particular conduct
26 and that conduct causes the injury, damage, or harm.

27 (b) The member, director, officer, or agent engages in tortious
28 conduct that causes the injury, damage, or harm.

29 (c) The member, director, officer, or agent is otherwise liable
30 under another statute or under the common law.